

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EDWARD J. STEINER,

CASE NO. 22-5526-RJB-SKV

Plaintiff,

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING CASE

BRENT KEMPSTER,

Defendant.

This matter comes before the Court on the Report and Recommendation of U.S.

Magistrate Judge S. Kate Vaughn. Dkt. 44. The Court has considered the Report and Recommendation, Plaintiff's Objections to the Report and Recommendation, Defendant's Response to the Objections and the remaining file.

On May 10, 2023, the Report and Recommendation (Dkt. 44) was filed recommending that the Defendant's motion to dismiss (Dkt. 34) be granted and Plaintiff's claims be dismissed for lack of subject matter jurisdiction. Dkt. 44. The Report and Recommendation also recommends that all remaining motions be stricken and the case be dismissed. *Id.*

The Plaintiff's objections (Dkt. 45) do not provide a basis to refuse to adopt the Report and Recommendation. The Report and Recommendation addresses the Plaintiff's contentions that the Defendant acted under the color of law. As stated in the Report and Recommendation, it is immaterial whether the incident took place at the store or the post office. While the Plaintiff refers to the possibility that the Court may have diversity jurisdiction (28 U.S.C. § 1332(a)), he makes no showing that he and the Defendant are citizens of different states. The Plaintiff's references to various federal criminal statutes are equally unavailing. These statutes authorize the federal government to prosecute crimes within Indian Country (*See e.g. United States v. Other Medicine*, 569 F.3d 677, 680 (9th Cir. 2010)(The Major Crimes Act of 1885 authorizes the "federal government to prosecute Native Americans in federal courts for a limited number of enumerated offenses committed in Indian Country . . ."), but contain no provision for a private citizen to bring criminal charges. As stated in the Report and Recommendation, this Court does not have subject matter jurisdiction over the Plaintiff's claims.

The Report and Recommendation should be adopted, the Defendant's Motion to Dismiss should be granted, all pending motions stricken, and the case dismissed for lack of subject matter jurisdiction.

ORDER

It is **ORDERED** that:

- The Report and Recommendation (Dkt. 44) **IS ADOPTED**;
- The Defendant’s Motion to Dismiss (Dkt. 34) **IS GRANTED**;
- All other pending motions **ARE STRICKEN AS MOOT**; and
- The case **IS DISMISSED** for lack of subject matter jurisdiction.

1 The Clerk is directed to send uncertified copies of this Order to Magistrate Judge
2 Vaughn, all counsel of record, and to any party appearing pro se at said party's last known
3 address.

4 Dated this 22nd day of June, 2023.

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7 ROBERT J. BRYAN
8 United States District Judge
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